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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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2352 7590 10/18/2011 OSTROLENK FABER LLP 1180 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8403				
EXAMINER				
AMIRI, NAHID				
ART UNIT		PAPER NUMBER		
3679				
MAIL DATE		DELIVERY MODE		
10/18/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/500,583

**Applicant(s)**

WEBJORN, JAN

**Examiner**

NAHID AMIRI

**Art Unit**

3679

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1,2,5-8,10-12 and 14-18 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1,2,5-8,10-12,14,15,17 and 18 is/are rejected.
- 8) ☒ Claim(s) 11,12 and 16 is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB/USP) Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

In view of Applicant's Amendment received 16 June 2011, amendments to the claims have been entered. Claims 3, 4, 9 and 13 are canceled. Claims 1, 2, 5-8, 10-12 and 14-18 are pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 5-8, 10, 14, 15, 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to Claim 1, it should be noted that the preamble of claim 1 sets forth only a single flanged member subcombination which is intended to be used in a flanged joint combination. As initially set forth, these claims are drawn solely to the single flanged member and the remaining elements of the combination have not been positively included, e.g., claim 1, lines 2-4, wherein applicant sets forth that the intended use flanged joint is in a joint that comprises both the first flanged member as well as "a corresponding second flanged member with a second flanged end having a second end surface" and claim 1, lines 4-5, the phrase "the first flanged member comprising: a first flanged end with a first end surface...the second flanged member of said flanged joint", make clear that the claim is to a flanged member and not the flanged joint. However, lines 33-37 then go on to purportedly define the single flanged member in terms of it's interaction with the second flanged member of the flanged joint and positively includes the elements of the combination (e.g., the second flanged member). Accordingly, it is unclear as to whether the combination or subcombination is actually being claimed. For this Office action, it is presumed that only the subcombination of the "flanged member" is being

claimed, especially since the instant application also includes claims drawn to the combination, e.g., claims 33+. If applicant intends for the combination to be claimed, then the preamble must be amended accordingly. However, it should also be noted that if claim 1 is amended to clearly recite the combination, then any duplicate claiming as compared to claim 11 must be avoided.

Further with respect to claim 1, it is unclear how the flanged member is “configured” to interact with the second flanged member. What particular configuration is being set forth? Note that while an element of a claim may be functionally defined in relation to how it is intended to be used, it remains that it is the structure of that flanged member, and not how it is intended to be used, for which patentability is to be determined. Accordingly, what specific flange member structure do the numerous “configured” recitations define? Currently, it is not seen that the various recitations of intended use serve to structurally define the flanged member to any greater extent than is already done by the actual structural features set forth.

Claim 3, line 2, it is unclear what Applicant means by having the phrase “varyingly concave”. Further, it is unclear what constitutes “varyingly concave”. Is “concave” being required or not?

Claim 11, lines 22-23, it is unclear what “point” of the load transferring surface of the first flanged member constitutes “the outermost abutment point” which is farthest in the radial direction from the central axis of the first flanged member. Does this point constitute the outermost point of the first flanged member or not? Therefore, Applicant should define how this “outermost abutment point” is related to the outermost point of the first flanged member. Further, lines 26-27, it is unclear what “point” of the load transferring surface of the first flanged member constitutes “the innermost abutment point” which is nearest in the radial direction from the central axis of the first flanged member. Does this point constitute the innermost point of the first flanged member or not? Therefore, Applicant should define how this “inner abutment point” is related to the innermost point of the first flanged member.

With respect to claim 16, it is unclear how the recitation of “directly contact” further limits claim 11, since claim 11, lines 20 and 25, recite that the end surfaces of first and second flanged members abut one another, which clearly means they are in direct contact with one another. Same applies to claim 15.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

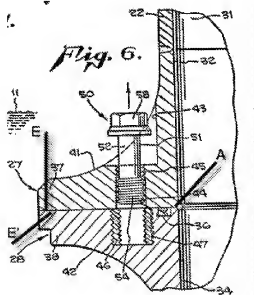
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,183,562 Watkins et al.**

At the outset, it should be noted that claim 1 is drawn solely to a single flanged member and it is this one flanged member for which patentability is to be determined. How this flanged member is intended to interact with some other flanged member in a flanged joint is of little consequence to the patentability of the single flanged member, itself. Should applicant believe that the functional recitations of intended use impart patentably distinguishing structure to the single flanged member, then he is reminded that he has the burden of proof to show that such is not inherently present in similar prior art flanged members (i.e., similar as claimed).

With respect to claim 1, it should be noted that the claim drawn only to one flanged member. Accordingly, as claimed, Watkins et al. disclose a flanged member (Fig. 6) configured to be included as a first flanged member (37) in a flanged joint in a pressure equipment device, the flanged joint comprising the first flanged member (27) and a corresponding second flanged member (38) with a second flanged end having a second end surface (E', please see Examiner's markup), said first flanged member (37) comprising a first flanged end with a first end surface (E, please see Examiner's markup) which capable of corresponding to the second end surface (E') of the second flanged end of the second flanged member (38), an entirety of the first load transferring surface positioned and configured to face the second end surface (E'); at least a portion of the first load transferring surface in an unstressed condition being concave (constituted by a curved portion of an innermost portion of the first flange 37) in radial direction, such that the at least the portion of the first load transferring surface is curved and defined by a concave curve function, the first end surface (E) comprising a first load transferring surface through which forces are transferred when assembled together with the corresponding second flanged

member; in a radial direction; wherein load transferring surface has an outermost abutment point (A) in a cross section of the first flanged member (37), the outermost abutment point (A) configured to abut against the second end surface of the second flanged member (38) when assembled together with said corresponding second flange member (38), the outermost (A) abutment point being the abutment point situated farthest in the radial direction from the central axis of the first flanged member (37), said load transferring surface has an innermost abutment point in a cross section of the first flanged member, the innermost abutment point configured to abut against the second end surface of the second flanged member when assembled together with said corresponding second flange member, the innermost abutment point being the abutment point situated nearest in the radial direction from the central axis of the first flanged member (37); and a boring (44) passing through the first end surface (E) at a radial distance from a central axis of the first flanged member (37) greater than the radial distance from the central axis of the first flanged member (37) to the innermost abutment point, and less than the radial distance from the central axis of the first flanged member to the outermost abutment point.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 2, 5-8, 10, 14, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 2,940,779 Buono.**

At the outset, it should be noted that claim 1 is drawn solely to a single flanged member and it is this one flanged member for which patentability is to be determined. How this flanged member is intended to interact with some other flanged member in a flanged joint is of little consequence to the patentability of the single flanged member, itself. Should applicant believe that the functional recitations of intended use impart patentably distinguishing structure to the single flanged member, then he is reminded that he has the burden of proof to show that such is not inherently present in similar prior art flanged members (i.e., similar as claimed).

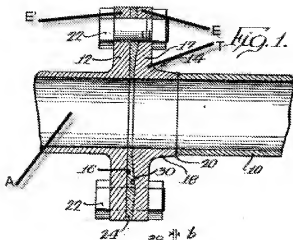
With respect to claims 1 and 2, it should be noted that the claim drawn only to one flanged member. Accordingly, as claimed, Buono discloses a flanged member (Fig. 1) configured to be included as a first flanged member (14) in a flanged joint in a pressure equipment device, the flanged joint comprising the first flanged member (14) and a corresponding second flanged member (12) with a second flanged end having a second end surface (E, please see below Examiner's markup), said first flanged member (14) comprising a first flanged end with a first end surface (E, please see below Examiner's markup) which capable of corresponding to the second end surface of the second flanged end of the second flanged member (12), the first end surface (E) comprising a first load transferring surface through which forces are transferred when assembled together with the corresponding second flanged member; in a radial direction; wherein load transferring surface has an outermost abutment point in a cross section of the first flanged member (14), the outermost abutment point configured to abut against the second end surface of the second flanged member (14) via the gasket (16) when assembled

together with said corresponding second flange member (14), an entirety of the first load transferring surface positioned and configured to face the second end surface (E'); the outermost abutment point being the abutment point situated farthest in the radial direction from the central axis of the first flanged member, said load transferring surface has an innermost abutment point in a cross section of the first flanged member (14), the innermost abutment point configured to abut against the second end surface (E') of the second flanged member (12) when assembled together with said corresponding second flange member (12), the innermost abutment point being the abutment point situated nearest in the radial direction from the central axis of the first flanged member (14); and a boring passing through the first end surface (E) at a radial distance from a central axis of the first flanged member (14) greater than the radial distance from the central axis of the first flanged member (14) to the innermost abutment point, and less than the radial distance from the central axis of the first flanged member (14) to the outermost abutment point.

Buono fails to disclose that at least a portion of the first load transferring surface in an unstressed condition being concave such that the concave of the first end surface is curved; and wherein the first load transferring surface is concave over the entire extension thereof in the radial direction.

It would have been obvious to one of ordinary skill in the art at the time of invention was made to form the concave of the first end surface as a curve instead of forming it from multi-straight lines, since there is no known criticality associated with the concave being curved and it is well-established that changes in shape are obvious expedients. The change in shape of the concave produces no new and unexpected results.





With respect to claim 5, Buono discloses (Figs. 1-3) wherein the first load transferring surface (30) comprises a varyingly concave surface in the radial direction; and wherein the part surface has different radii of curvature.

With respect to claim 6, Buono discloses (Figs. 1-3) that the first flange member (14) further comprising an internal axial through opening, the first load transferring surface (30) having innermost abutment point which capable of abutting against the corresponding second end surface of the second flanged member (12); and wherein the abutment point being situated nearest in the radial direction, to the opening.

Buono fails to disclose that the concavity of the first load transferring surface extending all the way in to the abutment point. It is notoriously old, well-known and conventional that all materials deform when undergo some external force. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the flange member of Buono with the concavity of the first load transferring surface extending all the way in to the abutment point in order to close the gap between the flange member and other member.

With respect to claim 7, Buono discloses (Figs. 1-3) that the first load transferring surface (30) has the innermost abutment point against the corresponding end surface (16) of the second flanged member (12), which has an internal through axial opening (A), the innermost abutment

point being situated farthest in the radial direction, at the opening (A), the concavity of the first end surface (30) extending all the way in to the abutment point.

With respect to claim 8, Buono discloses the claimed invention except for the conceived straight X that connects the proximal point of the first load transferring surface in the radial direction, with distal point thereof, in the radial direction, has a length  $L_x$  and the concavity of the first load transferring surface has a maximum depth  $D_k$  in relation to a conceived plane surface produced by said line, which depth  $D_k$  is of the order of 0.01%-2% of  $L_x$ .

It would have been an obvious matter of design choice to construct the concavity of end surface with Applicant's specific dimension since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claim 10, Buono discloses (Fig. 1) that at least a part of a transition area (T) (see attachment), between the surface of the flange directed away from the end surface (30) and a part of the first flanged member that is substantially parallel to a longitudinal axis of the member, is shaped as a substantially elliptical area.

With respect to claim 14, 15, 17, and 18, Buono discloses (Fig. 1) that the concave surface has more than one radii of curvature; wherein the first load transferring surface is configured to contact directly the second end surface; and wherein at least the portion of the first load transferring surface in the unstressed condition that is concave comprises a majority of the first load transferring surface; and wherein the second flanged member (12) is identical with the first flanged member.(14).

#### ***Allowable Subject Matter***

Claims 11, 12 and 16 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

As to claim 11, lines 33-37, Watkins et al. (US 4,183,562) disclose the claimed flanged member with the exception of the load transferring surface of the first flanged member faces the

load transferring surface of the second flanged member before assembly and is inclined in the radial direction outwards to form an angle in radial cross-section, the angle being such that a distance between the two end load transferring surfaces increases in the radial direction outwards, said inclined end load transferring surfaces being concave.

There is no teaching or suggestion, absent the applicants' own disclosure, for one having ordinary skill in the art at the time the invention was made to modify the a cable barrier system as disclosed by Watkins et al. (US 4,183,562) to have the above mentioned elemental features. Furthermore, such modifications would yield unexpected and unpredictable results.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 5-8, 10-12 and 14-18 have been considered but are moot in view of the new ground(s) of rejection.

However, with respect to claim 1, Applicant argues that claim 1 is allowable, since the allowable subject matter of claim 13 now recited in claim 1. This is not persuasive, because as Examiner stated advance above rejection, claim 1 is drawn solely to a single flanged member and it is this one flanged member for which patentability is to be determined. How this flanged member is intended to interact with some other flanged member in a flanged joint is of little consequence to the patentability of the single flanged member, itself. Therefore, the inclusion of its subject matter of claim 13 into claim 1 is of little consequence to the single flanged member subcombination.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (571) 272-8113. The examiner can normally be reached on Monday through Thursday from 8:00-6:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola

can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nahid Amiri  
Examiner  
Art Unit 3679  
September 24, 2011

/Daniel P. Stodola/  
Supervisory Patent Examiner, Art Unit 3679